

# 21<sup>st</sup> ANNUAL Mel Myers

LABOUR CONFERENCE



March 14 & 15<sup>th</sup> / 2024

VICTORIA INN HOTEL & CONVENTION CENTRE  
1808 Wellington Ave., Winnipeg, MB

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## PLENARY PRESENTATION

### THURSDAY MARCH 14, 2024

#### Plenary: Union Engagement of Indigenous Peoples

Historically, Unions have not always fought for the rights of Indigenous workers. The panel will explore ways in which Unions can engage Indigenous workers, and support reconciliation efforts.

**Presenters:** **Niigaan Sinclair**, Faculty of Arts Professorship in Indigenous Knowledge and Aesthetics in the Department of Indigenous Studies at the University of Manitoba  
**Jacqueline Romanow**, Associate Professor in Indigenous Studies at the University of Winnipeg  
**Moderator:** **Joel Deeley**, Myers LLP

## SESSION PRESENTATIONS

### THURSDAY MARCH 14, 2024

#### Session A/ - - - - -

##### A1/ Unions 101

Paul McKenna, Myers LLP, Andrew Fenwick, Myers LLP and Helen Krahn, MGEU

Back by popular demand. Unions 101 is an introductory session designed for persons new to the workings of Unions. The topics discussed will be of general application to all Unions, including the roles and responsibilities of Union Representatives and Shop Stewards. The speakers will also discuss some of the more contentious issues that seem to occur in most workplaces. Participants are welcome at all times to ask questions about areas of concern they may have experienced in dealing with management on a daily basis.

##### A2/ Social Media Update

Kristen Worbanski, Myers LLP and Clair Cerilli, Myers LLP

Social media use is ever-increasing and has made its way into the workplace. What used to be said around the water cooler can now be easily said to many people - including the employer - through an app on the phone in your pocket. The existence of these many online forums for communicating and expressing views raises privacy questions for employees and Unions. This session will consider the implications for employees of the blurred line between public and private communications on social media, including whether there is a reasonable expectation of privacy in respect of social media posts, the extent to which an employer can impose discipline for what employees say on social media platforms, and Union communications on social media.

##### A3/ Discipline Fundamentals

Jeff Smorang, Myers LLP and Erica Thompson, Myers LLP

This panel will discuss the disciplinary process from start to finish, beginning with the initial investigation meeting and proceeding through to arbitration. The panel will address issues including: grounds for imposing discipline, principles of progressive discipline, steps to take at the early stages to mitigate the penalty and factors arbitrators consider when being asked to reduce a penalty. The panel will do a brief presentation on each area and then ask the participants to be involved working through actual scenarios.

##### A4/ Medical Issues

Trevor Ray, Myers LLP and Cleyton Rückl, Myers LLP

The protection of an employee's personal medical information continues to raise controversial issues in the workplace. Can Employers require medical notes for absences and proof of fitness to return to work? Are absenteeism policies and attendance management policies permitted? Can an Employer require employees to submit to independent medical exams? What are employees required to provide if seeking accommodation for a medical condition? How do we protect the privacy of medical information?

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## Session B/

### B1/ Interactive Session

Shannon Carson, Myers LLP and  
Kristen Worbanski, Myers LLP

Back by popular demand! With full audience participation, we will watch and discuss a number of scenarios commonly faced by shop stewards in their often difficult role of representing, often difficult, members.

### B2/ Strike Action: Law and Lessons Learned

Susan Dawes, Myers LLP and  
Kyle Ross, President of the MGEU

In this session, we will outline the legal context of strike action and share recent experiences from the picket lines. Following the beginning to the end of a strike, the discussion will address everything from obtaining the strike mandate, planning for strike action, negotiating a strike protocol, establishing and delivering strike pay, strategies around different forms of strike action, understanding the psychology of the picket line, and tips around negotiating return-to-work agreements.

### B3/ The Duty to Accommodate

Jeff Smorang, Myers LLP and  
Trevor Ray, Myers LLP

What is the “duty to accommodate”? When and how does this duty exist? What is the role of the Union? This session will address basic questions as well as problems and situations that commonly arise

### B4/ Respectful Workplace

Joel Deeley, Myers LLP and  
Clair Cerilli, Myers LLP

This session will outline the legislative foundations underpinning respectful workplace policies, including relevant provisions in *The Human Rights Code*, *The Workplace Safety and Health Act* and *The Workplace Safety and Health Regulation*. We will go on to consider critical concepts and principles surrounding harassment, discrimination and the protected grounds under *The Human Rights Code*. We will also consider the distinction between “strong management” and harassment/discrimination.

The general duties imposed on employers and employees to ensure that a workplace is safe and free from harassment will be explored, including the steps employers must take in developing workplace policies. We will conclude by considering procedural fairness requirements when a respectful workplace complaint is raised and an investigation is undertaken, and the Union’s role in offering representation throughout.

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## Session C/

### C1/ Interactive Session (REPEAT OF SESSION B1)

Kristen Worbanski, Myers LLP and  
Jeff Smorang, Myers LLP

Back by popular demand! With full audience participation, we will watch and discuss a number of scenarios commonly faced by shop stewards in their often difficult role of representing, often difficult, members.

### C2/ Workers Charged and Convicted of a Crime

Greg Bartel, Myers LLP and Joel Deeley, Myers LLP

This session will consider the complex challenges that can arise when employees are charged and/or convicted of a crime. What advice should be provided to employees? What information should they provide to their employers? To what extent can the employer take action against an employee for criminal conduct outside the workplace? And what steps can an employer take against an employee as a consequence of that conduct? This session will consider these issues and will demonstrate how the advice of Union representatives can have a significant impact on the process. It will also include a walkthrough progression of criminal matters through the courts.

### C3/ Duty to Accommodate – An Advanced Perspective

Trevor Ray, Myers LLP and  
Cleyton Rückl, Myers LLP

A good session for Union Representatives looking to expand on a basic knowledge of the Duty to Accommodate. This panel will focus on issues specific to addictions and disabilities related to mental health including issues and problems that can arise related to “Last Chance Agreements”. It will also focus on accommodation issues relating to the COVID 19 pandemic.

### C4/ Organizing Do’s and Don’ts

Susan Dawes, Myers LLP

This panel will discuss the practical and legal realities of an organizing campaign, including: access to employees and employer property during the campaign; the certification process from start to finish; the proposed bargaining unit; employer rights to communicate during a campaign; unfair labour practices during organizing; and discretionary certifications.

PLENARY PRESENTATION

## FRIDAY MARCH 15, 2024

### Plenary: DFR's and Difficult Members

Unions have a duty to fairly represent their members and members can make a complaint to the Labour Board if they believe that duty has been violated. Some "DFR" complaints are inevitable, but Unions can always reduce the risk. This panel will explain the standard of representation that Unions must provide, discuss pro-active DFR defence strategies before a complaint is filed, and offer tips on representing difficult grievors. The Panel will also include the Registrar of the Manitoba Labour Board, who will share practical tips on how the Board deals with applications, from filing, through mediation, to any eventual hearing.

**Presenters:** Susan Dawes, Myers LLP, Ray MacIsaac, Registrar of the Manitoba Labour Board and Paul McDonald, MGEU Legal Counsel

SESSION PRESENTATIONS

## Friday March 15, 2024

### Session D/ - - - - -

#### D1/ Ask a Labour Lawyer

Paul McKenna, Myers LLP, Shannon Carson, Myers LLP and Paul McDonald, MGEU

This session puts the panel in the hot seat by giving attendees the opportunity to ask the labour law questions on their minds. The panelists will answer questions about organizing, bargaining, collective agreements, discipline, management rights, workers' rights, employment-related statutes, and (almost) anything else you're wondering about. Please note this session is not intended to address specific fact situations and is intended for general information only.

#### D2/ Social Media Update (REPEAT OF SESSION A2)

Kristen Worbanski, Myers LLP and Clair Cerilli, Myers LLP

Social media use is ever-increasing and has made its way into the workplace. What used to be said around the water cooler can now be easily said to many people - including the employer - through an app on the phone in your pocket. The existence of these many online forums for communicating and expressing views raises privacy questions for employees and Unions. This session will consider the implications for employees of the blurred line between public and private communications on social media, including whether there is a reasonable expectation of privacy in respect of social media posts, the extent to which an employer can impose discipline for what employees say on social media platforms, and Union communications on social media.

#### D3/ Duty to Accommodate - An Advanced Perspective (REPEAT OF SESSION C3)

Trevor Ray, Myers LLP and Jeff Smorang, Myers LLP

A good session for Union Representatives looking to expand on a basic knowledge of the Duty to Accommodate. This panel will focus on issues specific to addictions and disabilities related to mental health including issues and problems that can arise related to "Last Chance Agreements". It will also focus on accommodation issues relating to the COVID 19 pandemic.

#### D4/ Workplace Privacy/Surveillance

Greg Bartel, Myers LLP and Joel Deeley, Myers LLP

At this time of rapid technological development, which has made it possible for employers to collect, use, and disclose workers' personal information in novel ways, it is increasingly critical for Unions and employees to understand workplace privacy rights. This session will review the current state of the law regarding worker privacy in such diverse areas as the reasonable expectation of privacy in the workplace, background checks, off-site surveillance, and more.

Proceeds will go to The West Central Women's Resource Centre.



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